

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 28

January 19, 1995, 2:21 p.m.  
Page S-1157 Temp. Record

## UNFUNDED MANDATES/State Tax Collection on Interstate Mail-Orders

**SUBJECT:** Unfunded Mandate Reform Act of 1995 . . . S. 1. Cohen motion to table the Bumpers perfecting amendment No. 144 to the Gorton perfecting amendment No. 31, as amended, to the language proposed to be stricken by the committee amendment beginning on page 25, line 11, as modified.

### ACTION: MOTION TO TABLE AGREED TO, 73-25

**SYNOPSIS:** Pertinent votes on this legislation include Nos. 15-27, 29-41, 43-45, and 47-61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million.

The committee amendment beginning on page 25, line 11, as modified, would strike the provision that would give the Governmental Affairs Committee in the Senate, and the Committee on Government Reform and Oversight in the House, the authority to make the final determination on whether proposed legislation contains a Federal mandate. It would also strike the provision providing that the levels of Federal mandates for a fiscal year will be determined based on the estimates of the respective budget committees. (The Budget Committee, which considered the bill sequentially in accordance with Budget Act requirements, struck these provisions with this one amendment). As modified, the amendment would insert language to provide that in the Senate, the Presiding Office will consult with the Committee on Governmental Affairs to the extent practicable on questions concerning whether a mandate exists in a pending matter. It would also add that in the Senate, the levels of Federal mandates for a fiscal year will be determined based on estimates made by the Budget Committee.

The Gorton amendment to the language proposed to be stricken by the committee amendment, as amended (see vote Nos. 23-25), would express the sense of the Senate: that Goals 2000 history standards that were developed before February 1, 1995 should not

(See other side)

YEAS (73)			NAYS (25)		NOT VOTING (2)	
Republicans (52 or 100%)	Democrats (21 or 46%)		Republicans (0 or 0%)	Democrats (25 or 54%)	Republicans (1)	Democrats (1)
Abraham	Hutchison	Baucus		Akaka	Kassebaum- <sup>2</sup>	Johnston- <sup>2</sup>
Ashcroft	Inhofe	Biden		Bingaman		
Bennett	Jeffords	Boxer		Bradley		
Bond	Kempthorne	Breaux		Bryan		
Brown	Kyl	Campbell		Bumpers		
Burns	Lott	Daschle		Byrd		
Chafee	Lugar	Exon		Conrad		
Coats	Mack	Feingold		Dodd		
Cochran	McCain	Feinstein		Dorgan		
Cohen	McConnell	Glenn		Ford		
Coverdell	Murkowski	Kerrey		Graham		
Craig	Nickles	Kerry		Harkin		
D'Amato	Packwood	Kohl		Heflin		
DeWine	Pressler	Lautenberg		Hollings		
Dole	Roth	Mikulski		Inouye		
Domenici	Santorum	Moynihan		Kennedy		
Faircloth	Shelby	Murray		Leahy		
Frist	Simpson	Nunn		Levin		
Gorton	Smith	Pell		Lieberman		
Gramm	Snowe	Reid		Moseley-Braun		
Grams	Specter	Rockefeller		Pryor		
Grassley	Stevens			Robb		
Gregg	Thomas			Sarbanes		
Hatch	Thompson			Simon		
Hatfield	Thurmond			Wellstone		
Helms	Warner					

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

be approved or certified; that Goals 2000 history standards should not be based on standards developed primarily by the National Center for History in the Schools prior to February 1, 1995; and that any recipient of funds for the development of Goals 2000 history standards should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world. Further, it would express the sense of the Senate: that States should not shift costs to local governments, which often leads to property tax increases; that State legislatures should not impose unfunded mandates on local governments without first fully considering those mandates; and that a primary objective of this Act should be to reduce taxes and spending at all levels and to end the practice of shifting costs with little or no benefit to taxpayers. Finally, the amendment would express the sense of the Senate that "the United States Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack."

**The Bumpers perfecting amendment** to the Gorton perfecting amendment, as amended, to the language proposed to be stricken would authorize States to require out-of-State businesses to collect sales taxes on goods that they send to residents in their States. States that collected such taxes would be required to establish toll-free telephone lines for businesses with questions about local and State tax rates. States that collected State sales taxes would also have to collect local taxes. States would give out-of-State businesses the choice of paying the exact amount of tax due for each tax jurisdiction or of paying a blended tax rate. States could order that the amounts collected be turned in up to four times per year. Out-of-State companies that shipped less than \$100,000 worth of goods into a State in a year would be exempt from collecting sales tax for that State; companies that sold less than \$3 million gross in a year would be exempt from collecting sales taxes in any State in which they do not have retail outlets.

Debate was limited by unanimous consent. Following debate, Senator Cohen moved to table the Bumpers amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

Passing this amendment would unfairly impose an enormous burden on the mail-order business, causing a great deal of economic harm. The problem is that our colleagues have falsely concluded that mail-order companies are doing well because they have an unfair competitive advantage over retail outlets, in that they cannot be required to collect sales taxes from their customers. To solve this nonexistent problem, our colleagues have proposed a solution the costs of which they have grossly underestimated.

The Supreme Court has ruled that it is unconstitutional for a State to require out-of-State businesses to collect taxes on its behalf. Thus, a company may only be forced to collect taxes for a State if it actually has a presence in a State, and is thus under that State's jurisdiction. The Supreme Court has clearly held that this is a commerce issue and is therefore under the Federal Government's jurisdiction. Many governors and mayors may well be anxious to impose a tax-collecting burden on residents of other States, knowing full well that those residents could not then retaliate by voting against them. However, Members of Congress have a responsibility to consider national interests beyond such selfish local motives. Clearly, a State that is able to force out-of-State residents to collect taxes will only benefit, but that benefit does not necessarily outweigh the costs to those out-of-State residents. The Supreme Court was right in declaring that this issue should be decided at the Federal level, because only at the Federal level will a State's gains be weighed against the costs to the out-of-State businesses.

Every State that imposes a sales tax requires its citizens to pay sales tax on their mail-order purchases. However, most people do not know of this requirement, and never pay anything. Thus, as our colleagues contend, States lose tax that is due to them by their citizens. Within a State, it is easy to collect a tax simply by requiring merchants to collect it. A local merchant will know the tax code, and will be able to apply it without too much difficulty. Sometimes, of course, there will be problems, because even understanding one local tax code can be demanding. For example, the State of Maine, which has a sales tax, has numerous exemptions, which it explains in a 7-page summary; within the State of Maine itself the situation is further complicated by a patchwork of local tax jurisdictions with different sales taxes and exemptions.

Across the country there are more than 6,000 such tax jurisdictions. Businesses within a jurisdiction can and do learn the local tax code, but it is unreasonable to demand businesses within one jurisdiction to know the tax rules in 6,000 other jurisdictions. However, that is exactly what the Bumpers amendment would require. The amendment would make them either collect the exact amount due or collect a blended rate fee that is confusing to consumers. In both cases, companies would be responsible for collecting exactly the right amount of money. Since at least one-third of all mail purchases are by check, a customer's failure to enclose the right amount would be tantamount to a requirement to reorder. The blended rate would be easier to comply with, because businesses would only have to learn the tax codes and exemptions of the 46 States with sales taxes, but it would cause additional problems with customers. Purchasers would not understand why, in many jurisdictions, the sales tax they would have to pay for out-of-State purchases was greater than the amount that they have to pay for in-State purchases. With blended rates, the problem of underpaying taxes would be much greater, because people would simply send in their checks with the normal amount of tax due.

Both of these tax collection schemes would make the out-of-State businesses liable if they did not collect the right amount of tax (and, with the accounting nightmare this amendment would create, we guarantee that they would not collect the right amount). Currently, many mail-order companies instruct purchasers to include the requisite amount of tax, but those collection efforts are on the honor system--whatever is collected is turned over, without an effort on the part of the companies to make sure the right amount

JANUARY 19, 1995

VOTE NO. 28

is collected. They trust the customers to add the right amount, because the responsibility of doing so, by law, rests with their customers. Making a company liable would greatly increase collection costs, though, because the company, instead of the customer, would be responsible for making sure that exactly the right amount of tax was paid. With this amendment, companies would soon find that they have to keep detailed records for each tax jurisdiction, in order to be able to survive State audits of their quarterly sales tax remissions. Senators should keep in mind that we are talking about a tax on a State's residents. The tax is not on the companies. Our goal should be to try to devise a collection system that imposes the same burdens on in-State and out-of-State businesses. The playing field should be level.

Proponents of this amendment seem unconcerned about any burden that it may impose. With flimsy evidence, they casually insist that it would be easy to comply with. Rather than dwelling on how the amendment would work in practice, they have instead intimated rather darkly that the only reason any mail-order business stays in business is because customers effectively pay less for their products by not adding sales taxes. On this point, the senior Senator from Arkansas in particular seems to have an L.L. Bean in his bonnet. During his long and voluble discourse on this amendment, he made frequent reference to this fine company in Maine. His repetitive contention is that L.L. Bean has an unfair advantage over other businesses simply because it does not collect State and local sales taxes from its out-of-State customers. We, on the other hand, suggest that L.L. Bean is a success because of its superior products and superior service--products are delivered within 48 hours, and, if a customer has any complaints with a product within 30 days, a year, 5 years, or ever, L.L. Bean will replace it no questions asked. People do not buy from this company to avoid taxes--the premiums they pay for shipping and handling, in fact, usually dwarf any applicable sales taxes. They buy because of the quality of the products and service. Still, listening to the Senator from Arkansas, one would suspect that Main Street merchants are up in arms over this Maine company not collecting local taxes.

For our part, we have not heard many complaints from small businesses. In fact, in a recent poll of National Federation of Independent Businesses (NFIB) members, 67 percent of respondents said they opposed making out-of-State companies collect State and local sales taxes. On the other hand, we have heard many complaints from small business owners about another company of which we have a high opinion, Wal Mart. Wal Mart, which is based in Arkansas, has built an empire by placing large department stores in small towns, causing small stores in those towns to go bankrupt. Many of the former owners of those bankrupt stores are now employees of Wal Mart. We are not finding fault with this company--it is preferred by consumers, and is winning in our free enterprise system. However, for the sake of consistency, we think that if the Senator from Arkansas is so desirous of placing an unfair burden on mail-order companies, particularly L.L. Bean, in order to help small business owners, then he should be even more willing to place unfair burdens on Wal-Mart, which has torn through small-town America like a hurricane.

In all fairness, some way to collect all sales taxes fairly should be found. We suggest hearings in the Finance Committee to develop an equitable solution to this problem. For now, though, we urge the tabling of the ill-considered solution proposed in the Bumpers amendment.

**Those opposing the motion to table contended:**

Mail order companies are doing \$100 billion worth of business each year. The rate of growth in this industry is 6 percent yearly. Nearly all of this business is subject to State and local sales taxes, but very little of the amount due is ever collected. The problem is that the Supreme Court has ruled that a State may not require businesses to collect sales taxes on goods that they sell to its citizens unless those businesses operate retail outlets within the State. States, may, and do, tax their citizens directly for buying those goods, but few Americans know that they are supposed to pay State and local sales taxes on their purchases of out-of-State goods.

This situation is grossly unfair to in-State retail outlets. Their competitors start with a very large advantage over them. Some mail order companies go so far as to send fliers advising people to go to local merchants, write down the product numbers on goods they wish to purchase, and then send in their orders. These companies thus avoid nearly all the expenses involved in running a business--they do not need floor space or salesmen, and they do not need to collect sales taxes. With such a huge advantage, it is no wonder that mail order companies are growing and Main Street America is crying foul.

Some Senators contend that it would be too difficult for companies to collect these taxes. This contention is nonsense. Many companies, including the company started by the junior Senator from Utah, already require the addition of all State and local taxes due on products they sell out-of-State. Other companies, though, require taxes only in those States in which they have retail outlets--their catalogs generally have tables showing the amount of tax due for each jurisdiction. Thus, the fact that so many mail-order companies already collect sales taxes makes it hard for us to accept the argument that doing so is prohibitively difficult.

Still, we have tried to make sure that this amendment is moderate. We mandated that every State that requires out-of-State companies to collect sales taxes must maintain a 1-800 phone line to answer questions about their tax codes. Also, we required that States collect local taxes as well as State taxes, and that they give companies the option of paying State-wide, blended rates for local taxes instead of separate rates for separate jurisdictions. Finally, we only applied the amendment to companies doing more than \$3 million a year in business; thus, big companies like the L.L. Bean company in Maine will have to comply, but mom-and-pop operations that may have a hard time figuring out different States' tax codes will not.

This amendment is fair, and is long overdue. It has the support of mayors and governors across America; we hope our colleagues

will give it their support as well.